

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
T-Mobile <i>et al.</i> Petition for Declaratory Ruling)	
Regarding Incumbent LEC Wireless Termination Tariffs)	
)	

**OPPOSITION AND COMMENTS REGARDING PETITIONS FOR
RECONSIDERATION**

Pursuant to Section 1.429 of the Federal Communications Commission’s (“FCC” or “Commission”) rules,¹ T-Mobile USA, Inc. (“T-Mobile”) submits these comments and opposition regarding certain petitions for reconsideration of the *WTT Order*.² Specifically, T-Mobile opposes the Missouri Small Telephone Company Group’s (“MoSTCG”) request to allow incumbent local exchange carriers (“incumbent LECs”) to opt into state-approved reciprocal compensation or traffic termination agreements between commercial mobile radio service (“CMRS”) providers and other incumbent LECs. Additionally, T-Mobile responds to the Rural Cellular Association’s (“RCA”) and the American Association of Paging Carriers’ (“AAPC”) requests for clarification or reconsideration of the Commission’s adoption of Section 20.11(f) of its rules.

¹ 47 C.F.R. § 1.429. All petitions for reconsideration or clarification filed on or before April 29, 2005, in this proceeding hereinafter will be short-cited.

² See *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4855 (2005) (“*WTT Order*”).

I. THE COMMISSION SHOULD REJECT MoSTCG’S REQUEST TO EXTEND SECTION 252(i)’s OPT-IN RIGHTS TO INCUMBENT LECs

MoSTCG offers no legal or policy basis to extend the opt-in rights, or any other interconnection rights, under Section 252 of the Communications Act of 1934, as amended (“Communications Act”) to incumbent LECs. As an initial matter, Section 252(i) requires only *LECs* to permit requesting carriers to opt into state-approved interconnection agreements.³ The Commission has held that CMRS providers are not LECs and therefore are not subject to any of the LEC obligations under Sections 251 and 252.⁴ Accordingly, Section 252(i) does not provide any basis to permit incumbent LECs the right to opt into state-approved reciprocal compensation or traffic termination agreements.

Because the Commission found that CMRS providers have no reciprocal compensation obligations toward incumbent LECs under Sections 251 and 252, the Commission exercised its authority under Sections 201 and 332 of the Communications Act to extend to incumbent LECs the right to invoke the negotiation and arbitration procedures set forth in Section 252 of the Act.⁵ The Commission’s reference to Section 252 was not meant to invoke the statutory basis for its action in the *WTT Order*, but rather was merely a shorthand method for describing the procedures that the Commission intended to extend to incumbent LECs seeking reciprocal compensation from CMRS providers.

³ Section 252(i) provides that “[a] *local exchange carrier* shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.” 47 U.S.C. § 252(i) (emphasis added).

⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶¶ 1004-06, 1008 (1996) (“*Local Competition Order*”), *recon.*, 11 FCC Rcd 13042 (1996) (subsequent history omitted).

⁵ *See WTT Order*, ¶ 14 (noting that the revision of Section 20.11 of FCC’s rules was made “pursuant to our plenary authority under sections 201 and 332 of the [Communications] Act”).

Neither Section 201 nor Section 332 requires the Commission to extend all of the rights and obligations under Section 252 to reciprocal compensation arrangements between CMRS providers and incumbent LECs. Moreover, the Commission did not intend to apply the entire panoply of Section 252 rights and obligations to those arrangements. In fact, in exercising its authority under Section 201 and 332 to allow incumbent LECs the right to invoke Section 252's negotiation and arbitration procedures, the Commission merely intended "to make clear our preference for contractual arrangements" and "to ensure that LECs have the ability to compel negotiations and arbitrations" for establishing reciprocal compensation arrangements.⁶ The Commission's preference for contractual arrangements was based upon its finding that "negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the 1996 Act" than unilaterally imposed tariffs.⁷ Thus, the Commission intended to adopt rules that would facilitate competition by removing obstacles to negotiations and providing a viable means for CMRS providers and incumbent LECs to engage in negotiations for reciprocal compensation arrangements.

Contrary to MoSTCG's claim, extending Section 252(i)'s opt-in rights to incumbent LECs will not advance the Commission's pro-competitive policies favoring negotiated contractual arrangements, but rather will frustrate those policies and undercut CMRS providers' right to indirect interconnection under Section 251(a) of the Communications Act. Specifically, extending opt-in rights to incumbent LECs would allow them to impose inefficient rates and terms on a CMRS provider. As MoSTCG noted, the Commission's "all-or-nothing" rule requires that a carrier seeking to adopt the terms of an approved agreement must adopt that

⁶ *Id.* ¶¶ 9, 16.

⁷ *Id.* ¶ 14.

agreement in its entirety.⁸ Thus, if an incumbent LEC seeks to opt into an existing reciprocal compensation agreement that also specifies terms and conditions for direct interconnection with a CMRS provider, the incumbent LEC could demand to adopt the agreement in its entirety, including the provisions allowing for direct interconnection. This would allow incumbent LECs to circumvent the right of CMRS providers under Section 251(a) to establish indirect interconnection arrangements as well as their right under Section 251(c)(2)(B) to interconnect at “any technically feasible point within the [ILEC’s] network.”⁹ Additionally, the risk that incumbent LECs will opt into direct interconnection arrangements will discourage CMRS providers from entering into direct interconnection arrangements with any incumbent LEC, even if those arrangements might prove to be more efficient under certain circumstances.

Furthermore, contrary to MoSTCG’s claim, any uncertainty in the interim reciprocal compensation pricing rules adopted in the *WTT Order* does not warrant extending opt-in rights to incumbent LECs. As both T-Mobile and MoSTCG have noted in their petitions for clarification or reconsideration,¹⁰ Section 20.11(f) incorporates Section 51.715’s interim pricing provisions that are based on Section 51.707’s proxy pricing rules, which were vacated in *Iowa*.¹¹ Grant of T-Mobile’s petition, however, should remove any uncertainty regarding the validity of the interim pricing rules as applied to reciprocal compensation arrangements between CMRS providers and incumbent LECs, thus rendering MoSTCG’s concern moot.

⁸ See MoSTCG Petition at 3-4 n.5.

⁹ 47 U.S.C. § 251(c)(2)(B).

¹⁰ See T-Mobile Petition at 4-5; MoSTCG Petition at 4.

¹¹ *Iowa Utilities Board v. FCC*, 219 F.3d 744, 756-57 (8th Cir. 2000) (“*Iowa*”), *aff’d in part and rev’d in part on other grounds sub nom. Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002).

II. THE COMMISSION LAWFULLY ADOPTED SECTION 20.11(f), BUT SHOULD CLARIFY THE PROPER SCOPE OF THE RULE

A. The Commission Should Clarify That Section 20.11(f) Applies To Reciprocal Compensation Arrangements Only

In their petitions for clarification or reconsideration, both RCA and AAPC suggest that Section 20.11(f) could be construed to extend incumbent LEC interconnection obligations under the Communications Act to CMRS providers.¹² T-Mobile does not read the *WTT Order* as having imposed interconnection obligations on CMRS providers pursuant to the Commission's authority to implement Section 251(c) of the Communications Act. As noted above, CMRS providers have no obligations toward incumbent LECs under Sections 251(c) and 252. Because of this lack of obligations, the Commission revised Section 20.11 "pursuant to our plenary authority under sections 201 and 332 of the [Communications] Act."¹³ T-Mobile nonetheless supports RCA's request for clarification that the *WTT Order* does not impose Section 251(c) obligations on CMRS providers.

In revising Section 20.11, the Commission intended to adopt procedures for establishing reciprocal compensation arrangements between CMRS providers and ILECs. Specifically, the Commission found it "necessary to clarify the type of arrangements necessary to trigger *payment* obligations."¹⁴ Accordingly, the Commission adopted Section 20.11(e), which prohibits LECs from "impos[ing] *compensation obligations* for traffic not subject to access charges upon [CMRS] providers pursuant to tariffs."¹⁵ Given its decision to prohibit the use of tariffs to

¹² See RCA Petition at 4-5; AAPC Petition at 4.

¹³ See *WTT Order*, ¶ 14.

¹⁴ *Id.* ¶ 9 (emphasis added).

¹⁵ *Id.*, App. A (emphasis added).

impose compensation obligations on non-access traffic, the Commission adopted Section 20.11(f) “to ensure that LECs have the ability to compel negotiations and arbitrations” for establishing reciprocal compensation arrangements.¹⁶

As RCA noted, however, Section 20.11(f) could be misconstrued to grant incumbent LECs a broad right to “request interconnection from” a CMRS provider, rather than a more limited right to request reciprocal compensation arrangements.¹⁷ To clarify the Commission’s intent, Section 20.11(f) should be revised to provide that incumbent LECs have the right to request reciprocal compensation arrangements from a CMRS provider and, in connection with that request, to invoke the negotiation and arbitration procedures set forth in Section 252 of the Communications Act. Alternatively, the Commission could achieve the same result by revising the Part 51 reciprocal compensation rules, as RCA requested. The Commission also should clarify that, as discussed above, any reference to negotiation and arbitration procedures under Section 252 is solely a shorthand for procedures similar to those that the Commission has applied under Section 252, rather than reliance upon Section 252 as its jurisdictional authority.

B. The Commission Provided Adequate Notice of Section 20.11(f)

Although AAPC’s petition for reconsideration challenges the broad scope of Section 20.11(f) as applied to paging carriers, it does not challenge the application of that section to interconnection arrangements between incumbent LECs and non-paging CMRS providers.¹⁸ Accordingly, the Commission should view the scope of AAPC’s petition as limited to issues

¹⁶ *Id.*, ¶ 16.

¹⁷ *See* RCA Petition at 4.

¹⁸ *See* AAPC Petition at 6.

affecting only interconnection arrangements between incumbent LECs and one-way paging carriers.

The Commission, however, should reject AAPC's claim to the extent that it could be construed to suggest that the Commission failed to provide adequate notice of Section 20.11(f) as applied to non-paging CMRS providers. The Administrative Procedure Act ("APA") requires that "[g]eneral notice of proposed rule making shall be published in the Federal Register," and that "[a]fter notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission[s]." ¹⁹ The Commission fully complied with these requirements by issuing a public notice seeking comment on the reciprocal compensation issues involving CMRS providers and incumbent LECs, as raised in the petition for declaratory ruling filed by T-Mobile and other parties.²⁰ This public notice was subsequently published in the Federal Register²¹ and therefore satisfies the notice-and-comment requirements of the APA.²²

III. CONCLUSION

Based upon the foregoing, T-Mobile urges the Commission to reject MoSTCG's petition for reconsideration to allow incumbent LECs to opt into existing reciprocal compensation or

¹⁹ 5 U.S.C. § 553(b), (c).

²⁰ *See Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic*, Public Notice 17 FCC Rcd 19046 (2002); *see also Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, ¶¶ 90-96 (2001).

²¹ 67 Fed. Reg. 64120 (Oct. 17, 2002).

²² *See United States Telecom Ass'n v. FCC*, 400 F.3d 29, 40 (D.C. Cir. 2005) (finding that Federal Register publication of a notice as a request for comment on a petition for declaratory ruling, rather than as a notice of proposed rulemaking, "is not fatal" for purposes of compliance with APA's notice-and-comment requirements).

traffic termination agreements that wireless carriers have with other incumbent LECs. The Commission also should clarify that Section 20.11(f) applies only to reciprocal compensation arrangements between CMRS providers and incumbent LECs, and does not impose upon CMRS providers any interconnection obligations under Section 251(c).

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CERTIFICATE OF SERVICE

I, Theresa Rollins, do hereby certify that I have on this 30th day of June, 2005, had copies of the foregoing **OPPOSITION AND COMMENTS** delivered to the following, via First Class U.S. mail or electronic mail, as indicated:

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